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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA

No. CR13 0764 WHO

12 Plaintiff,

**DEFENDANT FERDINAND'S REPLY  
TO GOVERNMENT'S OPPOSITION  
TO MOTION TO EXCLUDE DNA  
EVIDENCE [ECF NOS. 648,749]**

13 v.

14 ESAU FERDINAND,

15 Defendant.  
16 \_\_\_\_\_/

Date: January 22, 2016  
Time: 9:00 a.m.  
Crtrm.: Honorable William H. Orrick

17 Defendant Ferdinand hereby replies to the Government's Opposition to Defendant  
18 Ferdinand's Motion to Exclude DNA Evidence. (Dkt. No. 749) [hereinafter Opposition]  
19 Defendant Ferdinand's investigation of the SERI laboratory DNA testing is ongoing and more  
20 time will be necessary to acquire additional documentation and background materials in order to  
21 effectively litigate the *Daubert* issues as to the DNA evidence. Counsel is working with other  
22 defense counsel, particularly counsel for defendant Charles Heard, to investigate issues regarding  
23 the SERI laboratory because of our shared interest in the laboratory and their testing methods,  
24 protocols, validations, personnel, and history. Counsel for defendant Heard has made specific  
25 requests from the government for documents and information, and now we are in the process of  
26 jointly requesting the issuance of a subpoena *duces tecum* for materials from the SERI laboratory.  
27 Expert Keith Inman has been appointed by the court to assist in the DNA investigation for Mr.  
28 Ferdinand. Raw data from the government's 2015 testing by SERI has been forwarded to Mr.

1 Inman and acquiring the additional information and documentation will be necessary before he  
2 can complete his analysis.

3 In light of the above, counsel for Mr. Ferdinand is currently unable to provide a  
4 substantive reply in support of his DNA/*Daubert* motion and he will not be able to do so until he  
5 obtains the necessary documentation and information, analyzes it, and submits further briefing.  
6 In light of the Court's recent indications regarding timing and rescheduling of the case, further  
7 time seems feasible in order to enable the parties and the Court to appropriately address the  
8 DNA/*Daubert* issues, and counsel requests that the Court permit counsel to undertake the  
9 necessary work.

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11 Dated: January 10, 2016

Respectfully submitted,

13 /s/  
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15 ROBERT WAGGENER  
16 Attorney for Defendant  
17 ESAU FERDINAND  
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